

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION

IN RE:

MICHAEL KRICHESKY,

CHAPTER 11

DEBTOR.

CASE NO. 1-19-43516-ess

JUDGE: Elizabeth S. Stong

**LIMITED OPPOSITION TO DEBTOR'S MOTION TO STRIKE AND
DISMISS WITH PREJUDICE CHAPTER 11 CLAIM BY US BANK, NA**

Select Portfolio Servicing, Inc. as Servicer for U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, on behalf of the holders of the WaMu Mortgage Pass-Through Certificates, Series 2005-AR15 ("SPS"), by and through its attorneys, Shapiro, DiCaro & Barak, LLC, as and for its Limited Opposition to Debtor's Motion to Strike and Dismiss With Prejudice Chapter 11 Claim by US Bank, NA, dated May 14, 2019, (the "Claim Objection") respectfully affirms the following to be true under penalty of perjury:

1. I am an Attorney with Shapiro, DiCaro & Barak, LLC, attorneys for Select Portfolio Servicing, Inc., and am familiar with the facts and circumstances surrounding this matter.
2. Michael Krichevsky (the "Debtor") is the owner of the property located at 120W Oceana Drive W, Brooklyn, NY 11235 (the "Oceania Property") and of the property located at 4221 Atlantic Avenue, Brooklyn, NY 11224 (the "Atlantic Property").
3. SPS is a secured creditor of the Debtor with respect to the Oceania Property.
4. Wells Fargo Bank, N.A. as servicer for U.S. Bank National Association, as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2006-F ("Wells Fargo") holds a secured lien on the Atlantic Property.

5. Debtor filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code on June 6, 2019.

6. On August 15, 2019, SPS filed a proof of claim, reflected on the claims register as claim number 2-1, reflecting a total claim of \$849,743.46 and pre-petition arrears of \$336,296.18 (the “SPS Claim”). The SPS claim was filed in the name of U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, on behalf of the holders of the WaMu Mortgage Pass-Through Certificates, Series 2005-AR15.

7. On August 15, 2019, Wells Fargo filed a proof of claim, reflected on the claims register as claim number 3-1, and later amended on May 21, 2020 to claim number 3-2, reflecting a total claim of \$1,098,754.69 and pre-petition arrears of \$512,924.33 (the “Wells Fargo Claim”). The Wells Fargo claim was filed in the name of U.S. Bank National Association, as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2006-F.

8. On May 19, 2020, Debtor filed the instant Claim Objection against “US Bank”.

9. The relief sought by the Debtor in the Claim Objection is very broad, as he alleges Rule 9011 sanctions, fraud upon the Court, lack of standing, and even alleges that the filed proof of claim could be dismissed pursuant to Fed. R. Civ. P. 12(b)(1), (4), (6) and (7).

10. Although a careful review of the Debtor’s Claim Objection makes it clear that the Debtor’s Claim Objection is being brought against Wells Fargo, and that the claim the Debtor is seeking to strike is the Wells Fargo Claim, claim number 3 on the claims register, the Debtor repeatedly refers to the creditor merely as US Bank.

11. In the Claim Objection, the Debtor does not refer to the Wells Fargo Claim by number.

12. The Debtor similarly fails to mention the address of the Property secured by the disputed claim.

13. SPS is filing the instant Limited Objection to ensure that the record is clear, and to prevent the possibility that a holding of the Court could be misrepresented as applying to SPS, for example.

14. SPS seeks to ensure that the record is clear that it is not the SPS claim that is the subject of the Claim Objection.

15. If the Court should enter an order with respect to the Claim Objection, SPS asks that the order be specific enough to ensure that confusion or misrepresentation would not result.

WHEREFORE, Select Portfolio Servicing, Inc. as Servicer for U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, on behalf of the holders of the WaMu Mortgage Pass-Through Certificates, Series 2005-AR15 respectfully requests that the Court clarify the record with respect to the Debtor's Claim Objection; or for such other relief as this court may deem just and proper.

Dated: November 13, 2020
Merrick, New York

Respectfully Submitted,

/s/ Robert W. Griswold
Robert W. Griswold
Bankruptcy Attorney
Shapiro, DiCaro & Barak, LLC
Attorneys for Select Portfolio Servicing, Inc. as
Servicer for U.S. Bank NA, successor trustee to
Bank of America, NA, successor in interest to
LaSalle Bank NA, on behalf of the holders of the
WaMu Mortgage Pass-Through Certificates, Series
2005-AR15
175 Mile Crossing Boulevard
Rochester, New York 14624
Telephone: (585) 247-9000
Fax: (585) 247-7380

SHAPIRO, DICARO & BARAK, LLC
Attorneys for Select Portfolio Servicing, Inc. as Servicer
for U.S. Bank NA, successor trustee to Bank of America,
NA, successor in interest to LaSalle Bank NA, on behalf of
the holders of the WaMu Mortgage Pass-Through
Certificates, Series 2005-AR15
One Huntington Quadrangle, Suite 3N05
Melville, NY 11747
Telephone: (631) 844-9611, Fax: (631) 844-9525
Robert W. Griswold

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION

IN RE:

CHAPTER 11

MICHAEL KRICEVSKY,

CASE NO. 1-19-43516-ess

DEBTOR.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)ss:
COUNTY OF MONROE)

I, Ariane B. Drew, being sworn, say, I am not a party to this action; I am over 18 years of age, I reside in Ontario County, New York.

On November 13, 2020 I served the within Limited Opposition to Debtor's Motion to Strike and Dismiss With Prejudice Chapter 11 Claim upon:

TO: Debtor Appearing Pro Se
Michael Krichevsky
4221 Atlantic Avenue
Brooklyn, NY 11224

Trustee
Marianne DeRosa
Office of the Chapter 13 Trustee
100 Jericho Quadrangle
Suite 127
Jericho, NY 11753

U.S. Trustee - Brooklyn
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, NY 10014

at the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Date 11/13/2020

Ariane B. Drew
Ariane B. Drew
Bankruptcy Paralegal
Shapiro, DiCaro & Barak, LLC
Attorneys for Select Portfolio Servicing, Inc.
as Servicer for U.S. Bank NA, successor
trustee to Bank of America, NA, successor in
interest to LaSalle Bank NA, on behalf of the
holders of the WaMu Mortgage Pass-
Through Certificates, Series 2005-AR15
175 Mile Crossing Boulevard
Rochester, New York 14624
Telephone: (585) 247-9000
Fax: (585) 247-7380

Sworn to before me this
13th day of November, 20 20



Notary Public

MICHAEL J. CHAITKIN
Notary Public, State of New York
Monroe County Reg. # 02CH6077570
Commission Expires July 15, 20 22